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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,033	04/19/2004	Raymon W. Lush		2380
31083	7590	11/30/2004		
THOMTE, MAZOUR & NIEBERGALL, L.L.C. 2120 S. 72ND STREET, SUITE 1111 OMAHA, NE 68124				
			EXAMINER NGUYEN, TRINH T	
			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

Application No.

10/827,033

Applicant(s)

LUSH, RAYMON W.

Examiner

Trinh T Nguyen

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/3/04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Marshall (US 6,655,319).

Marshall discloses a squirrel or bird teasing hanger assembly, for a bird feeder, said hanging assembly comprises:

- a housing having upper and lower ends;
- a lower support extending downwardly from said lower end of said housing; said support adapted to have a bird feeder suspended therefrom;
- an upper support extending upwardly from said upper end of said housing for attachment to a supporting member;
- a sound-producing device mounted on said housing;
- a battery-powered circuit in said housing for powering said sound-producing device;
- said lower support having a load cell connected thereto;
- said load cell being electrically connected to said circuit;
- said sound-producing device being activated when said load cell senses a predetermined weight on said bird feeder when a squirrel or large bird moves onto the bird feeder.

For claim 2, Marshall further discloses a remote control receiver is electrically connected to said battery-powered circuit whereby said sound-producing device will be activated when said remote control receive receives a signal from a remote control.

For claim 3, Marshall further discloses said battery-powered circuit also includes a manual on-off switch.

For claim 4, Marshall further discloses a light-emitting device is mounted on said housing and is electrically connected to said battery-operated circuit.

For claim 5, Marshall further discloses a squirrel or bird teasing hanger assembly, for a bird feeder, said hanging assembly comprises:

- a housing having upper and lower ends;
- a lower support extending downwardly from said lower end of said housing which is movable between upper and lower positions with respect to said housing;
- said support adapted to have a bird feeder suspended therefrom;
- an upper support extending upwardly from said upper end of said housing for attachment to a supporting member;
- a light-emitting device on said housing;
- a battery-powered circuit in said housing for powering said light emitting device;
- said lower support having a load cell connected thereto;
- said load cell being electrically connected to said circuit;
- said light emitting device being activated when said load cell senses a predetermined weight on said bird feeder when a squirrel or large bird moves onto the bird feeder.

For claim 6, Marshall further discloses a remote control receiver is electrically connected to said battery-powered circuit whereby said light emitting device will be activated when said remote control receive receives a signal from a remote control.

For claim 7, Marshall further discloses said battery-powered circuit also includes a manual on-off switch.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US 6,655,319).

As described above, Marshall discloses most of the claimed except for indicating that the sound-producing device emits the sound of an animal such as the sound of a hawk or eagle or a cat or a dog.


However, it would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to have modified the squirrel or bird teasing hanger assembly of Marshall so as to include the sound of an animal, since applicant did not provide a reason and/or showing any criticality as to why the sound has to be of an animal. Furthermore, one of ordinary skill in the art would have expected applicant's invention to perform equally well with the sound such as one taught by Marshall.

**Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as cited on PTO-form 892.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu, can be reached on (703) 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Trinh T Nguyen  
Patent Ex.  
Art Unit 3644  
11/26/04